IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1960

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COURIER JOURNAL & LOUISVILLE TIMES COMPANY, Petitioner

vs.

HON. CURTIS Judge Jefferson Circuit Court Criminal Branch Second Division Jefferson County, Kentucky, and JAMES M. YODER Official Court Stenographer Jefferson Circuit Court Criminal Branch Second Division Jefferson County, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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COURIER-JOURNAL & LOUISVILLE TIMES COMPANY, - - - - - - - - *Petitioner,*

v.

L. R. CURTIS, Judge, Jefferson Circuit Court, Criminal Branch, Second Division, Jefferson County, Kentucky and JAMES M. YODER, Official Court Stenographer, Jefferson Circuit Court, Criminal Branch, Second Division, Jefferson County, Kentucky, - - - - - - - - *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the COURT OF APPEALS OF KENTUCKY; entered in the above entitled case on May 22, 1959, and overruling a Petition for Rehearing on June 24, 1960.

CITATIONS TO OPINIONS BELOW.

The Opinions of the COURT OF APPEALS OF KENTUCKY (R. 25-30), the Concurring Opinion (R. 31-34) and the Dissenting Opinion (R. 35-43), are printed in Appendix B hereto, *infra,* Appendix B, pp. 17-35, are reported in 335 S. W. 2d 934.

JURISDICTION.

The judgment of the COURT OF APPEALS OF KENTUCKY was entered on May 22, 1959. (R. 24; Appendix B, pp. 17-35, *infra*).

A timely Petition for Rehearing filed October 23, 1959 (R. 48) Appendix C, pp. 1-84, *infra*) was denied on June 24, 1960 (R. 52; Appendix C, p. 85, *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3), since denial of title, right and privilege under the Constitution of the United States is claimed by Petitioner.

QUESTION PRESENTED.

Can the sole evidence upon which a State Court set aside a conviction and death sentence for two heinous and brutal murders be kept secret by that State Court in violation of the public right in public trials and the freedom of the press guaranteed by the Fourteenth Amendment?

THE CONSTITUTION SECTION INVOLVED.

The section of the United States Constitution involved is the Fourteenth Amendment. Its provisions are printed in Appendix A. (Appendix A, p. 1, *infra*.)

STATEMENT.

On New Year's Eve 1957, an elderly Louisville couple were cruelly and brutally beaten to death (R. 2). The brutal nature of the case aroused widespread community fears and interest. Subsequently, one William F. Owen, a youth of sub-normal mentality, was tried, convicted and sentenced to death for each of the murders (R. 2, 15, 16, 48 at 3; Pet. for Rehearing, App. C, p. 3, *infra*). On January 12, 1959, each of these convictions came for review before the trial court on Motions for a New Trial timely filed. At that time, in open court, counsel for Owen advised the court that Owen wished to have a conference in chambers. The Respondents, Curtis and Yoder, Judge and Official Court Stenographer respectively, Counsel for Owens, and the Commonwealth and members of the press then left the courtroom and entered the chambers. There, Owen advised the court that he would not make a statement in the presence of representatives of the press since he did not wish them to publish it. The Respondent, Curtis, advised Owen that any statement Owen made would become a public record and as such would be available to the press for publication. After this statement, members of the press withdrew from the chambers without protest and Owen proceeded to make a confession which was stenographically recorded by the Respondent, Yoder. (R. 2, 15, 16, 48 at 3; Pet. for Rehearing, App. C, p. 3, *infra*.)

Immediately thereafter all parties returned to the Courtroom. The Respondent, Curtis, announced that

the Motions for a New Trial had been sustained and a jury was impaneled. (R. 2, 15, 16, 48 at 3; Pet. for Rehearing, App. C, p. 3, *infra*). Owen then changed his previous plea of not guilty to guilty and the Assistant Commonwealth Attorney then made a statement to the jury. In that statement he referred to a "confession" made by Owen in chambers (without revealing its contents) and requested the jury to now return a verdict of guilty with the imposition of a life sentence. (Under Kentucky proceedings juries fix the sentence in capital cases). The procedure was then repeated in the second case and the Respondent Curtis then entered a life sentence in each case to be served concurrently. (R. 2, 15, 16, 48 at 3; App. C, p. 3).

Immediately thereafter members of the press unsuccessfully sought copies of the "confession" which was the basis for the change in Owen's fortunes and which had been referred to by the Assistant Commonwealth's Attorney. (R. 2, 7, 48 at 10; Pet. for Rehearing, App. C, p. 10, *infra.*)

Subsequently, on repeated occasions the Respondent, Curtis, advised Petitioner's representatives and employees that the "confession" was a public record which they had a right to read, copy and publish, but denied petitioner and its employees the opportunity to exercise this right. (R. 3, 8, 9, 10, 15, 16, 17, 48 at 3, 4; App. C, pp. 3, 4).

Thereafter, Petitioner brought an Original Proceeding in the Court of Appeals of Kentucky petitioning for a Writ of Mandamus requiring the Respondents, Curtis and Yoder, to furnish Petitioner a com-

plete and accurate transcript of the confession of William Floyd Owen. (R. 1-5, App. B, pp. 1-12, *infra.*) The Petition alleged that the confession was an admitted public record and that denial of opportunity to examine and publish it was a violation of the First and Fourteenth Amendments to the Constitution of the United States of America and of various sections of the Constitution of Kentucky (R. 3, 4, App. B, p. 4, *infra*). A response to the Petition was made denying the allegations of the Petition. (R. 12, 13, 14; App. B, pp. 13-16, *infra.*)

On May 22, 1959, after oral argument and briefing, the Court of Appeals of Kentucky rendered its Opinion denying the Writ. (R. 24, App. B, pp. 17-21, *infra.*) The Opinion summarily disposed of Petitioner's First Amendment claims (R. 26, App. B, p. 18, *infra*), and ignored the other Constitutional questions (R. 25-30; App. B, pp. 18-21, *infra*). A dissenting opinion (R. 35-43; App. B, pp. 25-35, *infra*), would have granted the Writ. This Opinion recognizes the right of public trial asserted by Petitioner, but does not specifically refer to Constitutional provisions in support thereof.

Thereafter, a timely Petition for Rehearing was filed and briefed by the parties. (R. 48, 51; App. C, pp. 1-84, *infra*). On June 24, 1960, the Petition for Rehearing was denied without an Opinion by the Court. (R. 52; App. C, p. 85, *infra.*)